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January 28, 1997

**SETTLEMENT DISCUSSION--
NOT ADMISSIBLE FOR ANY PURPOSE**

David Fischal, Esq.
U.S. Department of Justice
Environmental Enforcement Division
1425 New York Avenue, N.W.
13th Floor
Washington, DC 20005

Re: *Sparton Technologies, Inc.--Coors Road Facility*

Dear Dave:

This letter is a follow-up to our settlement discussion of Friday. It serves two purposes: (1) to confirm that Sparton Technology, Inc. ("Sparton") intends to file a notice of intent for a discharge plan with NMED, and an application for an NPDES permit with EPA Region 6 by Friday, January 31, 1997; and (2) to restate Sparton's position on various issues that we discussed on Friday.

During our last few telephone conversations, there is much about which we have agreed with respect to addressing impacts to the environment associated with Sparton's Coors Road facility. First, we are in agreement that a study should be undertaken to design an on-site soil vapor extraction system, and that work should begin on Monday, February 3, 1997. Second, we agree that it would be helpful to expand the on-site containment system so that it is recovering 20 gallons per minute of water. Unfortunately, as we discussed, until Sparton has a long-term economical mechanism for disposing of recovered groundwater, we cannot proceed with this activity. Third, we agree a study should be undertaken to identify whether one containment well will efficiently prevent the further off-site movement of solvents, above MCLs. Fourth, we agree that regardless of the number of containment wells that might ultimately be required, there is no reason not to begin operating at least one well, as soon as possible, because such activity can only serve to limit potential environmental impacts associated with Sparton's Coors Road facility.

Unfortunately, there is one area in which we disagree, and that is whether Sparton should implement the off-site work prior to knowing whether it has a long-term economical mechanism to dispose of recovered groundwater. It is Sparton's understanding that resolving that issue would delay initiation of the off-site testing for, at most, six months. Given the length of time

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the parties have been developing a remedy for this site, now more than eight years, it is difficult for me to understand why such a relatively short delay in implementing the off-site testing has become such a critical issue with NMED and EPA.

From our conversation, I understood three concerns were causing NMED and EPA to chafe at any delay in off-site testing. First is what I would characterize as a "frustration" or "irritation" factor, namely that Sparton could run the test now, but is choosing not to do so. Second, you indicated that NMED and EPA have significant reservations about whether appropriate permits would be issued in six months. Finally, you suggested that NMED and EPA may, in fact, oppose discharge to the arroyo. Let me respond to each of these in turn.

While I can understand the "frustration" or "irritation" factor, I would submit that it should not be a driver in deciding how to proceed, especially, given the fact that the only alternative to a negotiated settlement is a decision approved ultimately by a Federal court. As you and I both recognize from our trial experience, it is difficult to predict what the outcome might be in that process or how long it will take. A negotiated resolution allows both parties to know up-front exactly what they are buying into, and allows the parties to set their own timetable. I am hopeful that perhaps a more detached review of the situation would allow NMED and EPA to set aside their "frustration" and/or "irritation" with Sparton.

As I mentioned to you on the telephone, I have a very difficult time understanding why, independent of any public input, consideration and approval of a discharge plan or issuance of an NPDES permit should require even six months. The water we discharge to the arroyo will not contain any substances above MCLs, associated with the Coors Road facility. Our field tests have demonstrated that at the maximum discharge rate we believe necessary to contain solvents in the plume, water discharged to the arroyo when it is dry will never reach the Rio Grande. Finally, our field tests demonstrate that instead of flowing to the Rio Grande, the discharged water percolates through the soil, so long as there is no other flow in the arroyo. It is our understanding that the absorption of water into the soil of the arroyo is consistent with Albuquerque's belief that the arroyo represents a "recharge corridor" for the underlying aquifer. As you and I discussed, if these facts are correct, then issuance of a permit or approval of a discharge plan should be a "no brainer." At any rate, we should know within a month or two of the filing of the intent to discharge and the application for an NPDES permit whether NMED or EPA have any technical concerns with what we have proposed. As I suggested on the telephone, if neither agency has such technical concerns and is willing to issue a draft NPDES permit authorizing our activity or indicate initial approval of the discharge plan, that might be sufficient comfort for Sparton management to consider beginning off-site testing. If Sparton management agrees to begin it is highly likely we could complete the off-site testing within the time frame suggested by NMED. In short, there would be no delay in completion of the work.

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The last point you made was perhaps the most troubling—namely, that NMED and EPA may oppose discharge to the arroyo. Apparently, such opposition could be based on a belief that recharge is a better approach for dealing with recovered groundwater or there needs to be absolute certainty regarding the design of a containment system before any permit could be issued. Either concern could significantly delay issuance of a permit, and the initiation of efforts to contain solvents to the areas where currently found.

As I mentioned to you, from both an engineering and an economic perspective, recharge is unacceptable to Sparton. If that is the only option available, then we are probably wasting our time to continue settlement discussions.

To me, the need for a more detailed design is a "make-weight" argument. Our request for approval of a discharge plan and/or an NPDES permit will be based upon a maximum discharge rate for both on-site and off-site of 270 gallons per minute. To the extent we have to deal with more water than what we have proposed, we will need to amend or change the NPDES permit, and any new issues raised by that additional water can be addressed in an amendment request.

Dave, I remain both perplexed and frustrated with the negotiation position advanced by NMED and EPA, although in fairness, I am sure you and your clients feel the same way about Sparton. We have never asked and are not asking now for either agency to give up any rights they have, if what we propose doesn't work. Maybe we both need to think about agreeing to some type of "structured" negotiation to see if we can't close this matter out.

Please give me a call after you have had a chance to review this letter and let me know if it makes sense for us to continue settlement discussions.

Yours very truly,

James B. Harris

JBH/jk
cc: R. Jan Appel
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PAGES TO FOLLOW: 3

FROM: Gloria Moran

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REMARKS:

FYI

SENT BY: DATE: 1/29/97 TIME: